

March 24, 2017

**EX PARTE COMMUNICATION
ECFS SUBMISSION**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: **MB Docket Nos. 14-50, 09-182, and 07-294**

Dear Ms. Dortch:

Dick Broadcasting Company, Inc. of Tennessee (“DBC”), the licensee of Stations WKRR(FM), Asheboro, NC (FIN: 16892) and WKZL(FM), Winston-Salem, NC (FIN: 16891), hereby submits this letter in response to the Motion filed by the Federal Communications Commission (the “Commission”) in which the Commission requests that the United States Court of Appeals for the Third Circuit hold in abeyance the consolidated *Prometheus* cases¹, pending Commission consideration of a Petition for Reconsideration filed by the National Association of Broadcasters in the above-referenced proceedings.²

In its Motion, the Commission informed the Court that it intends to act on the NAB Petition and that its reexamination of the decision issued in the 2014 *Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* proceeding³ will extend to issues not specifically raised in the NAB Petition.⁴

¹ See Commission Motion to Hold in Abeyance, *Prometheus Radio Project et al. v. FCC*, Nos. 17-1107 et al. (3d. Cir. Feb 15, 1017) (“Motion”).

² National Association of Broadcasters Petition for Reconsideration, MB Docket Nos. 14-50, et al. (Dec. 1, 2016) (“NAB Petition”).

³ Second Report and Order, 31 FCC Rcd 9864 (2016) (“Order”).

⁴ “NAB’s Petition permits the FCC to reconsider the Order more broadly, including reexamining those portions of the Order that NAB has not expressly asked the agency to reconsider.” Motion at 1, 4. See also *Globalstar, Inc. v. FCC*, 564 F.3d 476, 485-488 (Commission action on petition for reconsideration must provide reasoned explanation for decision but does not to be confined to particulars of the petition); *AT&T Corp. v FCC*, 113 F.3d 225, 229 (DC Cir. 1997) (order on petition for reconsideration satisfies administrative standards so long as order is a “logical outgrowth” of the proceeding and includes “a reasoned explanation for [the] decision that is supported by the record”).

While the NAB Petition does not address the issue of the treatment of AM/FM subcaps for local radio multiple ownership purposes, as set forth in the Commission's local radio ownership rule,⁵ DBC submits that the continued applicability of subcaps warrants a hard look from the Commission, given extensive technological, competitive and regulatory changes, internal and external to terrestrial radio, since the limits were first adopted in 1992.⁶

As others have pointed out, changes within terrestrial broadcast radio over the years have mitigated the differences between FM and AM service originally justifying the subcaps: Internet simulcasting and advances in digital radio technology have reduced the technical divide between FM and AM service; amended FM translator rules have helped to address AM signal deficiencies; and AM stations have become increasingly competitive, achieving strong market share in large and small markets alike.⁷ In the Order, DBC submits, the Commission mischaracterized or ignored record evidence of the impact of such changes.⁸

These changes continue to unfold, transforming the terrestrial broadcast radio industry alongside competitive pressures from alternative audio services. As demonstrated in another recent *ex parte* filing in the above-referenced proceeding,⁹ traditional terrestrial radio continues to lose critical ad dollars to online platforms, other media voices, and mobile applications. In view of such growing competition, the Commission cannot simply double-down on antiquated rules crafted for a broadcast-only world. Equitable regulatory conditions, opportunities for new entrants and innovative service in the public interest are tied to the overall robustness of the terrestrial broadcast radio industry. The efforts of regulators and individual broadcasters notwithstanding, as goes broadcast radio, so go these laudable goals. Accordingly, the Commission should now reevaluate the AM/FM subcaps in light of the new media landscape, rather than pledging allegiance to old ways and old rules. A clear-eyed analysis of present-day market realities demonstrates that competition, innovation and diversity are best served by the caps' removal.

Respectfully submitted,



Barry A. Friedman

⁵ 47 C.F.R. § 73.3555(a)(1).

⁶ *Review of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2778 (1992).

⁷ *See* Alpha Media et al. *Ex Parte*, MB Docket Nos. 14-50, et al. (March 2, 2017).

⁸ Order, 31 FCC Rcd at 9907-10, ¶¶ 113-20.

⁹ *See* Galaxy Communications *Ex Parte*, MB Docket Nos. 14-50, 09-182 (March 10, 2017)..